



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: SRS Technologies
File: B-222548.2
Date: August 21, 1986

DIGEST

Where seller of business which has not been formally dissolved and remains in existence as a legal entity was suspended at time of submission of a proposal and the firm remains suspended, under applicable regulation, the suspended firm's proposal could not be evaluated for award or included in the competitive range absent a waiver from the Secretary of the Navy or his authorized representative. Accordingly, the Navy properly excluded proposal from consideration notwithstanding that the proposal was assigned as part of sale to another firm which currently is eligible to contract with the government.

DECISION

SRS Technologies, Inc. (SRS) has protested the decision of the Department of the Navy (Navy) not to allow SRS to participate in the competition for award under request for proposals No. (RFP) N00123-85-R-0789. SRS claims that it should be permitted to participate as a successor in interest to Setac, Inc. (Setac), which had submitted a proposal under this RFP.

We deny the protest.

On August 12, 1985, the Navy suspended Setac from contracting with it. Nevertheless, 2 days later, Setac submitted a proposal under RFP -0789; subsequently, this proposal was evaluated by the Navy's contracting officer who was unaware of Setac's suspension until November 1985, at which time award had not yet been made. Prior to the contracting officer's discovery that Setac had been suspended, Setac had transferred this proposal on August 26, 1985, to SRS allegedly incident to a complete purchase of Setac's stock and assets by SRS, a firm which has not been suspended. The Navy refused to recognize SRS' right to pursue Setac's proposal notwithstanding SRS' purchase.

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The Navy argues that its initial consideration of Setac's proposal was erroneous in view of decisions by our Office and Department of Defense regulations and that its refusal now to consider SRS' proposal is proper. SRS contests the Navy's legal analysis.

We have recognized that it is within the contracting officer's discretion to make awards to firms that were suspended or debarred at the time they submitted their bids or proposals so long as the firms were not ineligible at the time of contract award. Tracor Applied Sciences, Inc., B-221230.2 et al., Feb. 24, 1986, 86-1 C.P.D. ¶ 189; Bauer Compressors, Inc., B-213973, Apr. 23, 1984, 84-1 C.P.D. ¶ 458; Kings Point Mfg. Co., Inc.; et al, B-210389, et al., Dec. 14, 1983, 83-2 C.P.D. ¶ 683. However, the Department of Defense, Federal Acquisition Regulation, Supplement (DFARS), § 9.405(a)(1) (DAC 84-12, July 25, 1985), provides in pertinent part:

"... proposals, quotations or offers received from any listed [debarred or suspended] contractor shall not be evaluated for award or included in the competitive range, and discussions shall not be conducted with such offeror, unless the Secretary concerned or his authorized representative determines in writing that there is a compelling reason to make an exception."

Therefore, it is clearly within the contracting officer's discretion to reject the proposal of a suspended contractor, even if this status is being reconsidered. See Atchison Engineering Co., B-208148.5, Aug. 30, 1983, 83-2 C.P.D. ¶ 278.

We understand that Setac's suspended status is still in effect so that it is obvious that Setac's proposal could not now be considered even if Setac was still the owner of the proposal. The Navy further informs us that it has reviewed the record and determined that no "compelling reason" otherwise existed for making an exception under the above regulation so as to provide for consideration of Setac's proposal when Setac was the owner of the proposal. SRS has not contested the Navy's finding of a lack of a compelling reason to consider Setac's proposal but insists that the contracting officer otherwise retained the discretion under our above precedent to allow Setac to compete under the RFP if the company's suspension ever were removed.

It is the Navy's position that SRS, which the Navy admits is a qualified contractor, cannot now pursue Setac's original proposal. Even if the Navy at one time erroneously considered allowing SRS to compete under the proposal acquired from Setac, the Navy has now determined that allowing SRS to compete would mean that a "suspended/debarred contractor would not be discouraged from submitting proposals and thereby acquiring an interest which the contractor could later auction." SRS contends that this possibility does not apply since SRS allegedly took Setac's proposal incident to an outright sale of Setac's entire business.

SRS reports that Setac has never been formally dissolved and continues as a legal entity. Under DFARS § 9.405(a)(1) Setac's proposal properly was not for consideration for award by the Navy, given Setac's then, and current, suspension absent a waiver by the Secretary of the Navy or his authorized representative. See Tracor Applied Sciences, Inc., B-221230.2, supra. Therefore, we uphold the Navy's position in refusing to consider Setac's proposal, notwithstanding the sale of the company's assets to SRS.

The protest is denied.

Harry R. Van Cleve

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General Counsel